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OCTOBER TERM, 1941

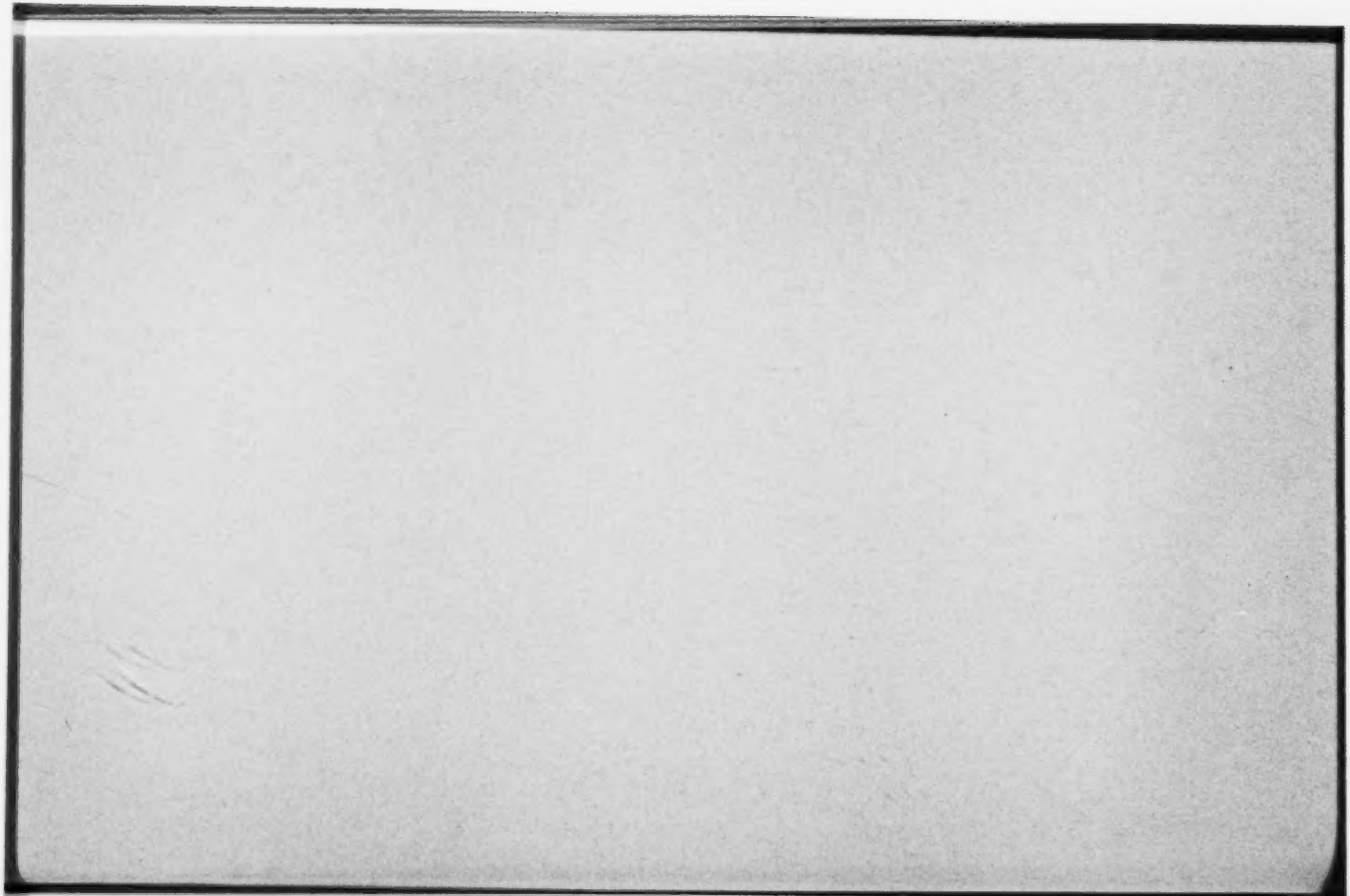
No. 858

DAVID P. LAVIETES,
Petitioner,
v.
FERRO STAMPING AND MANUFACTURING COMPANY,
a Michigan corporation,
JOHN H. ROETHEL,
DETROIT HARVESTER COMPANY, et al.

BRIEF FOR RESPONDENT, DETROIT HARVESTER COMPANY IN REPLY TO PETITIONER'S BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

RAYMOND K. DYKEMA,
Counsel for Respondent,
Detroit Harvester Company.

BEARDON-PARSHALL CO.



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This brief is filed on behalf of the respondent, Detroit Harvester Company, one of the several defendants in the District Court. Since nowhere in petitioner's "Statement of the Case" is this respondent mentioned, we supply the following additional statement of facts.

Detroit Harvester Company was made a defendant in this case as the successor of Dura Company, an Ohio

corporation. The assets of Dura Company were purchased by Detroit Harvester Company prior to commencement of this action and subsequent to execution of a license agreement between the defendant Roethel, as licensor, and Dura Company and the defendants, Ferro Stamping and Manufacturing Company and Briggs & Stratton, as licensees. Petitioner's bill of complaint in the District Court sought cancellation of this license agreement which was made pursuant to a settlement of interference proceedings in the Patent Office. The bill of complaint made extensive charges of fraud and conspiracy against the defendants. The District Court found these charges to be groundless and, on appeal, petitioner for the first time contended, as he does in his present petition, that the suit "is a suit in equity to construe two contracts". Neither Dura nor Detroit Harvester Company is, or ever was, a party to the two contracts (Exhibits 158 and 159) which petitioner claims he seeks to construe. We respectfully urge upon the Court the following propositions:

I. A WRIT OF CERTIORARI SHOULD NOT BE GRANTED AS AGAINST THIS RESPONDENT IN A "SUIT TO CONSTRUE TWO CONTRACTS" TO WHICH THIS RESPONDENT IS NOT A PARTY.

II. IN ANY EVENT THIS ACTION IS NOT SUCH AS TO CALL FOR THE EXERCISE OF THIS COURT'S DISCRETIONARY POWER TO GRANT ITS WRIT OF CERTIORARI.

ARGUMENT

I. A Writ of Certiorari Should Not be Granted as Against This Respondent in a "Suit to Construe Two Contracts" to Which This Respondent is Not a Party.

It is a fair statement of petitioner's bill of complaint that the bill charges a fraudulent conspiracy among all of the defendants to deprive the plaintiff of an undivided one-half interest in certain patents which plaintiff claimed under an alleged oral contract with defendant Roethel. The District Court held that there was no fraud or conspiracy and plaintiff has abandoned the claim of fraud on appeal. There is no justification whatsoever for continuing this respondent as a party if the suit is, as plaintiff claims at page 10 of his brief, "a suit in equity to construe two contracts" since neither Dura nor this defendant is, or was, a party to either contract.

II. In Any Event This Action is Not Such as to Call for the Exercise of This Court's Discretionary Power to Grant Its Writ of Certiorari.

Wholly apart from the separate position of this respondent, it is respectfully urged that the case stated by petitioner does not call for issuance of a writ of certiorari as against any of the defendants. Petitioner bases his application and states his reason for allowance of the writ as being first, that the lower court has decided an important question of law in conflict with the applicable legal decisions, in conflict with the weight of authority, and in conflict with the decisions of this Court, and sec-

ond, that the lower court has so far departed from the accepted and usual course of judicial proceedings as to call for the exercise of this Court's power of supervision.

The second ground may be quickly passed. Nowhere has petitioner pointed out any manner in which either the District Court or the Circuit Court of Appeals departed from the accepted and usual course of judicial proceedings. No exceptional or unjudicial conduct is revealed. All that appears is that petitioner is dissatisfied because he has lost a lawsuit which was fully tried and argued in the District Court, and extensively briefed and argued upon appeal in the Circuit Court of Appeals for the Sixth Circuit.

Nor is there any merit to the first ground stated by petitioner. Wholly apart from the merits of the claimed construction of the two contracts, Exhibits 158 and 159 (and to adopt petitioner's construction it is necessary to hold that the parties used the word "patents" innumerable times in such contracts, and every time correctly, except once when petitioner claims they meant "inventions") the issue does not involve an important question of local law. Adopting petitioner's own theory as to the nature of the case, the question is one of construction of the words used in an ordinary license agreement between private parties. No precedent of public significance is involved. The general principles of law which petitioner claims were not followed are not, and never were, in dispute. The case involves only their application to its particular facts. On petitioner's own theory a narrow issue of the construction of particular words used in particular contracts between particular parties is all that is decided by the case.

Respondent, Detroit Harvester Company, respectfully requests that the petition for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit be denied.

RAYMOND K. DYKEMA,
Counsel for Respondent,
Detroit Harvester Company.